

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

BALDUCCI'S WOOD FIRED PIZZA AND WINGS

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages

Employer: Balducci's Pizza, Inc.
dba Balducci's Wood Fired Pizza And Wings
419 S Broadway
Salem, NH 03079

Date of Hearing: September 11, 2014

Case No. 48463

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on July 16, 2014. The notice was sent to the employer and there was an objection. The objection was sent to the claimant and there was a request for a hearing. The Notice of Hearing was sent to both parties on August 20, 2014. The Wage Claim was filed for \$792.55 and there was a payment made of \$63.63. This made the Wage Claim for \$728.92.

The claimant testified that he worked for the employer for about three months. The claimant stated that he was making \$8.00 per hour at the start and was later moved to \$9.00 an hour on June 2, 2014. The claimant said that he recorded his hours on the employer's system when the system was working. He also kept track of the hours on his phone. The claimant said there were several times when he did not receive a paycheck and he never received a cash payout for time worked.

The employer testified that he had all of the records and the claimant was paid for all work. The employer also had a practice of paying cash to employees and saving them from going to the bank on a Friday night. He said it was also a benefit because the Shop closed late at night and many of the employees wanted cash to go out with their friends. The process was for the cashier to make a note that cash had been paid.

The employer also pointed out that on the claimant's last week he worked 8.5 hours but put in for 17. Also on the last week the claimant estimated that he worked for 51 hours yet the punch record shows 35 hours worked.

The employer had a very confusing payment method and relied on the cashier to write down what was paid out in cash to each employee.

FINDINGS OF FACT

RSA 275:43 I. Every employer shall pay all wages due to employees within 8 days including Sunday after expiration of the week in which the work is performed, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph II, on regular paydays designated in advance by the employer and at no cost to the employee.

803.01 (a). Pursuant to RSA 275:43, I and II, every employer shall pay all wages due to his/her employees within 8 days, including Sundays, after the expiration of the workweek on regular paydays designated in advance. Biweekly payments of wages shall meet the foregoing requirement if the last day of the second week falls on the day immediately preceding the day of payment. Payment in advance and in full of the work period, even though less frequently than biweekly, also meets the foregoing requirement.

This is the section of the law that mandates an employer pay an employee all wages due at the time the wages are due and owing.

It is the finding of the Hearing Officer, based on the written submissions and the testimony presented for the hearing, that there is a valid Wage Claim. The claimant has the burden to show that there are wages due and he met this burden.

The records submitted by the employer were confusing and the cash payouts were difficult to understand. Also, the affidavits presented did not allow for the claimant to cross examine the writers.

The claimant did have one area where he did not hold up his burden of proof. The testimony shows that in one case the claimant felt he was owed seventeen hours while the record shows that he worked eight and a half hours. Another issue was that one period of time the claimant is seeking 51 hours of work while the record shows he worked 35 hours in that time period.

The practice of paying cash to employees to offset part of a pay check and of giving cash advances leads to the problem of understanding what has been paid and what is still due in the paycheck. The record keeping burden is on the employer and this scenario does not present a good image of wages due.

The claimant filed the Wage Claim for \$792.55 and received a payment of \$63.63. It is also found that the claimant was off around \$220.50 in wages for reported hours. The Wage

Claim is valid in the amount of \$508.42. The claimant credibly defended his Wage Claim and the employer did show that there are practices of wage payment that are hard to follow and could lead to problems.

DECISION AND ORDER

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Hearing Officer finds that the claimant proved that he was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$508.42.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$508.42, less any applicable taxes, within 20 days of the date of this Order.

Thomas F. Hardiman
Hearing Officer

Date of Decision: October 8, 2014

TFH/klt